

Office of the Secretary of Defense

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(1) Scouting organizations operating at U.S. military installations located overseas (DoD Instruction 1015.9).³

(2) American National Red Cross (DoD Directive 1330.5).⁴

(3) United Service Organizations, Inc. (DoD Directive 1330.12).⁵

(4) United Seamen's Service (DoD Directive 1330.16).⁶

(5) Financial Institutions on DoD Installations (32 CFR part 231).

(o) Certain unofficial activities may be conducted on DoD installations, but need not be formally authorized because of the limited scope of their activities, membership or funds. Examples are office coffee funds, flower funds, and similar small, informal activities and funds. DoD Components shall establish the basis upon which such informal activities and funds shall operate.

PART 215—EMPLOYMENT OF MILITARY RESOURCES IN THE EVENT OF CIVIL DISTURBANCES

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AUTHORITY: Chapter 15 of title 10 U.S.C. (10 U.S.C. 331 et seq.).

SOURCE: 37 FR 3637, Feb. 18, 1972, unless otherwise noted.

§215.1 Purpose and scope.

This part establishes uniform Department of Defense policies, assigns responsibilities, and furnishes general guidance for utilizing DoD military and civilian personnel, facilities, equipment or supplies:

(a) In support of civil authorities during civil disturbances within the 50 States, District of Columbia, Commonwealth of Puerto Rico, U.S. possessions

and territories, or any political subdivision thereof.

(b) In other related instances where military resources may be used to protect life or Federal property or to prevent disruption of Federal functions.

§215.2 Applicability.

This part is applicable to all components of the Department of Defense (the Military Departments, Organization of the Joint Chiefs of Staff, Defense Agencies, and the unified and specified commands) having cognizance over military resources which may be utilized in accordance with the policies set forth herein.

§215.3 Definitions.

(a) *Civil disturbances* are group acts of violence and disorders prejudicial to public law and order within the 50 States, District of Columbia, Commonwealth of Puerto Rico, U.S. possessions and territories, or any political subdivision thereof. The term civil disturbance includes all domestic conditions requiring the use of Federal armed forces pursuant to the provisions of chapter 15 of Title 10, United States Code.

(b) *Federal property* is that property which is owned, leased, possessed, or occupied by the Federal Government.

(c) *Military resources* include military and civilian personnel, facilities, equipment, and supplies under the control of a DoD component.

(d) A *Federal function* is any function, operation, or action carried out under the laws of the United States by any department, agency, or instrumentality of the United States or by an officer or employee thereof.

§215.4 Legal considerations.

(a) Under the Constitution and laws of the United States, the protection of life and property and the maintenance of public order are primarily the responsibilities of State and local governments, which have the necessary authority to enforce the laws. The Federal Government may assume this responsibility and this authority only in certain limited instances.

(b) Aside from the constitutional limitations of the power of the Federal Government at the local level, there

³See footnote to §212.1(b).

⁴See footnote to §212.1(b).

⁵See footnote to §212.1(b).

⁶See footnote to §212.1(b).

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are additional legal limits upon the use of military forces within the United States. The most important of these from a civil disturbance standpoint is the Posse Comitatus Act (18 U.S.C. 1385), which prohibits the use of any part of the Army or the Air Force to execute or enforce the laws, except as authorized by the Constitution or Act of Congress.

(c) The Constitution and Acts of Congress establish six exceptions, generally applicable within the entire territory of the United States, to which the Posse Comitatus Act prohibition does not apply.

(1) The constitutional exceptions are two in number and are based upon the inherent legal right of the U.S. Government—a sovereign national entity under the Federal Constitution—to insure the preservation of public order and the carrying out of governmental operations within its territorial limits, by force if necessary.

(i) *The emergency authority.* Authorities prompt and vigorous Federal action, including use of military forces, to prevent loss of life or wanton destruction of property and to restore governmental functioning and public order when sudden and unexpected civil disturbances, disasters, or calamities seriously endanger life and property and disrupt normal governmental functions to such an extent that duly constituted local authorities are unable to control the situations.

(ii) *Protection of Federal property and functions.* Authorizes Federal action, including the use of military forces, to protect Federal property and Federal governmental functions when the need for protection exists and duly constituted local authorities are unable or decline to provide adequate protection.

(2) There are four exceptions to the Posse Comitatus Act based on Acts of Congress.

(i) In the cases of each of the first three of those described, paragraphs (c)(2)(i) (a), (b), and (c) of this section, personal Presidential action, including the issuance of a proclamation calling upon insurgents to disperse and retire peaceably within a limited time, is a prerequisite.

(a) *10 U.S.C. 331.* Authorizes use of the militia and Armed Forces when a State

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is unable to control domestic violence, and a request for Federal assistance has been made by the State legislature or governor to the President. Implements Article IV, section 4, of the Constitution.

(b) *10 U.S.C. 332.* Authorizes use of the militia and Armed Forces to enforce Federal law when unlawful obstructions or rebellion against the authority of the United States renders ordinary enforcement means unworkable. Implements Article II, section 3, of the Constitution.

(c) *10 U.S.C. 333.* Authorizes use of the militia and Armed Forces when domestic violence or conspiracy hinders execution of State or Federal law, and a State cannot or will not protect the constitutional rights of the citizens. Implements Article II, section 3, and the 14th Amendment of the Constitution.

(d) *House Joint Resolution 1292, June 6, 1968.*¹ Directs all departments of the Government, upon the request of the Secret Service, to assist that Service in carrying out its statutory duties to protect Government officials and major political candidates from physical harm. Assistance to the Secret Service is governed by DoD Directive 3025.13, “Employment of Department of Defense Resources in Support of the United States Secret Service,” July 15, 1968.²

(ii) It should be noted that none of the above authorities, in and of itself, provides sufficient legal basis to order members of the Reserve components to active Federal service.

§215.5 Policies.

(a) The employment of DoD military resources for assistance to civil authorities in controlling civil disturbances will normally be predicated upon the issuance of a Presidential Executive order or Presidential directive authorizing and directing the Secretary

¹Although this resolution has been placed in the Statutes at Large as Public Law 90-331, 82 Stat. 170, it has not been codified; it is set out in the notes to 18 U.S.C. 3056.

²Filed as part of original copies available from U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120, Code: 300.